OCT 8 1945
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 53

GANGE LUMBER COMPANY,

Appellant,

—vs.—

RALPH ROWLEY AND DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF APPELLEE RALPH ROWLEY

JAY C. ALLEN,
CHARLES R. CAREY,
Attorneys for Appellee Rowley

719 2nd Ave. Building
Seattle 4, Washington

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 53

GANGE LUMBER COMPANY,

Appellant,

—vs.—

RALPH ROWLEY AND DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF APPELLEE RALPH ROWLEY

JAY C. ALLEN,
CHARLES R. CAREY,
Attorneys for Appellee Rowley

719 2nd Ave. Building
Seattle 4, Washington

INDEX

	PAGE
I. OPINION BELOW	1
II. THE QUESTIONS INVOLVED IN THIS APPEAL	1
III. STATEMENT OF THE CASE	2
IV. POSITION OF APPELLEE ROWLEY	4
V. SUMMARY OF ARGUMENT	5
VI. ARGUMENT	6
1. The 1941 "Aggravation Clause" is Constitutional and Does Not Constitute the Taking of Appellant's Property Without Due Process of Law	6
2. The Washington Workmen's Compensation Act and the "Aggravation Clause" is Strictly Remedial in Character, and the Shortening or Lengthening of the Statute in Question Only Affects the Remedy and Not the Right	8
3. The Precise Question has Heretofore Been Previously Decided by the Supreme Court of the United States in *Mattson v. Department Case, Campbell v. Holt* and *Chase Securities Corporation v. Donaldson*	23
(A) *The Mattson Case*	23
(B) *Campbell v. Holt*	25
(C) *Chase Securities v. Donaldson, supra*	27
4. The Workmen's Compensation Act and "Aggravation Clause" is a Proper Exercise of the Police and Sovereign Powers of the State and Federal Constitutions and Amendments Thereto and is Not Unreasonable, Arbitrary or Oppressive, and Appellant Has No Vested Interest Therein	29

TABLE OF CASES

PAGE

Barbier v. Connolly, 113 U.S. 27, 31 31

Beels v. Department of Labor and Industries, 178 Wash. 301, 34 P. (2d) 917 11

Campbell v. Holt, 115 U.S. 620, 6 S. Ct. 209, 29 L. Ed. 483 ..... 5, 7, 11, 12, 13, 14, 16, 17, 22, 23, 25, 26

Chase Securities Corporation v. Donaldson, ... U. S. ....., 89 L. Ed. (No. 15) 1109, 1113 ..... 5, 7, 23, 27

Chelentis v. Luckenbach Steamship Co. Inc. 247 U. S. 372 10

Danzer & Co. v. Gulf & S. I. R. Co., 268 U.S. 633, 45 S. Ct. 612, 60 L. Ed. 1126 ..... 16, 26

Denning v. Quist, 160 Wash. 681, 296 Pac. 145, and 172 Wash. 83, 19 P. (2d) 656 ..... 7, 19, 20

Earle v. Froegtert Grain & Malting Co., 197 Wash. 341, 85 P. (2d) 264 16

Ferguson v. Department of Labor and Industries, 168 Wash. 677, 13 P. (2d) 39 7

Fisher Flouring Mills Co. v. Brown, 109 Wash. 680, 187 Pac. 399 30

Gange Lumber Co. v. Rowley, et al., 122 Wash. Dec. 234, 155 P. (2d) 802 1

Herr v. Schwager, 145 Wash. 101, 258 Pac. 1039 ..... 11, 16, 17, 26

Hilding v. Department of Labor and Industries, 162 Wash. 168 22

Kidd v. Pearson, 128 U.S. 1, 26 31

Lane v. Department of Labor and Industries, 21 Wash. (2d) 420, 151 P. (2d) 440 ..... 14, 26, 27, 32, 33, 34

Lawton v. Steele, 152 U.S. 133, 136 31

Mattson v. Department of Labor and Industries, 176 Wash. 345, 29 P. (2d) 675; 293 U.S. 151 ..... 2, 5, 6, 18, 22, 23, 32, 35

Monroe Logging Company v. Department of Labor and Industries, 21 Wash. (2d) 800, 153 P. (2d) 511 34

TABLE OF CASES—Cont.

PAGE

Mountain Timber Co. v. State of Washington, 75 Wash. 581, affirmed, 243 U.S. 219 ..... 30, 33
Nelson v. Department of Labor and Industries, 9 Wash. (2d) 621, 115 P. (2d) 1014 22
Peeples v. Hayes, 4 Wash. (2d) 253, 104 P. (2d) 305 16
Raymond Lumber Co. v. Raymond Light & Water Co., 92 Wash. 330, 159 Pac. 133 32
Reeder v. Crewes, 199 Wash. 40, 90 P. (2d) 267 21
Robinson v. McHugh, 158 Wash. 157, 291 Pas. 330, and 160 Wash. 703, 295 Pac. 921 ..... 7, 19, 20
Rowley v. Department of Labor and Industries, 21 Wash. (2d) 420, 151 P. (2d) 440 1
Schmeiling v. Department of Labor and Industries, 167 Wash. 692, 10 P. (2d) 229 7
Seattle v. DeWolfe, 17 Wash. 349, 49 Pac. 553 16
Seattle v. Gervasi, 144 Wash. 429, 259 Pac. 328 30
Shea v. Olson, 185 Wash. 143, 53 P. (2d) 615 ..... 30, 32
State v. Buchanan, 29 Wash. 602, 70 Pac. 52, 92 Am. St. 930, 59 L.R.A. 342 14
Smith v. Department of Labor and Industries, 8 Wn. (2d) 587, 113 P. (2d) 57 18
State v. Vinther, 176 Wash. 391, 29 P. (2d) 693 34
State ex rel. Crabb v. Olinger, 196 Wash. 308, 82 P. (2d) 865 ..... 22, 34
State ex rel. Davis-Smith Co. v. Clausen, 65 Wash. 156, 117 Pac. 1101 ..... 30, 33, 34
State ex rel. Davis-Smith Co. v, Washington, 243 U. S. 219, 61 L. Ed. 685, 37 S. Ct. 260 34
State ex rel. Lane v. Fleming, 129 Wash. 646, 255 Pac. 647 30
Tioga Railroad v. Blossburg and Corning Railroad, 20 Wash. 137, 150 13
Whitaker v. Green River Coal Co., 122 S.W. (2d) 1012 31

TEXTBOOKS

PAGE

Bouvier, Law Dictionary, Vol. 2 (14th Ed.), 484 and 436 ..... 9, 10

STATUTES

PAGE

Laws of Washington, 1911, Ch. 74 ..... 2, 19, 20, 25, 28, 29, 32, 33, 37, 38
Laws of Washington, 1927, Ch. 310, § 4 ..... 2, 6, 7, 17, 18, 25, 28, 38, 39
Laws of Washington, 1929, Ch. 132, § 2 ..... 20, 28
Laws of Washington, 1931, page 263 ..... 20, 21
Laws of Washington, 1941, Ch. 209, § 1 ..... 1, 3, 6, 8, 18, 28, 39
Remington's Revised Statutes of Washington:
§ 7675 20
§ 7679 11
§ 7686 11
§ 7697 ..... 20, 21

CONSTITUTIONS

PAGE

Washington State Constitution, Art. I 32
United States Constitution:
5th Amendment 2, 5
14th Amendment 2, 5, 12, 14, 24, 27, 31, 32, 36
Article I, § 10 7
§ 3 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 53

GANGE LUMBER COMPANY,

Appellant,

—vs.—

RALPH ROWLEY AND DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF APPELLEE RALPH ROWLEY

OPINION BELOW

The Opinion of the Supreme Court of the State of Washington from which this appeal has been taken is set forth in 122 Wash. Dec. (No. 8) 234, 155 P. (2d) 802, although the questions herein presented were first considered on appeal by the same Court in 21 Wash. (2d) 420, 151 P. (2d) 440.

I.

THE QUESTION INVOLVED IN THIS APPEAL

Does the enactment of Subdivision (h) of Section 1, Chapter 209, Laws of 1941, by the Legislature and

Electorate of the State of Washington, violate the 5th and 14th Amendments to the Constitution of the United States?

II.

STATEMENT OF THE CASE

In 1911 the Legislature of the State of Washington, acting under its Constitutional police and sovereign powers, enacted Chapter 74, Laws of 1911, creating what is commonly known as "The Washington Workmen's Compensatoin Aet," and in paragraph (h), Section 5 thereof, placed no restriction on the time in which a workman could apply for the reopening of his claim for "AGGRAVATION" once his compensation had been established. (See Appendix, page 38.) Thereafter the Act was amended by successive Legislatures in 1913, 1915, 1917, 1919 and 1923, without changing the "AGGRAVATION CLAUSE."

However in 1927 the Washington Legislature for the first time amended the "AGGRAVATION CLAUSE" and imposed a limitation of three years from the effective date of the Amendment in which an applicant, whose claim had heretofore been established or terminated, could apply foe readjustment (AGGRAVATION) and reopening of his claim. (Appendix, page 38.) The Constitutionality of the Act was challenged by the injured workman as being in contravention of the 5th and 14th Amendments to the Federal Constitution, but this Court in *Mattsen v. De-*

partment of Labor and Industries, 176 Wash. 345, 29 P. (2d) 675, 293 U.S. 151, held that the limitation imposed did not violate the claimant's constitutional rights. The same "Aggravation Clause" was reenacted in 1929 without change.

Appellee Rowley was injured on July 13, 1937, while in the employ of appellant and was paid $307.50 for permanent partial disability. His claim was closed March 9, 1938, and no appeal was taken from such order. The 3 year "AGGRAVATION CLAUSE" was in effect at that time.

In 1941, the Washington Legislature amended the Act by greatly increasing the benefits to injured workmen in conformity with economic conditions, and increased the time in which a claimant could apply for reopening of this claim because of "AGGRAVATION" from three to five years from the effective date of the Act. Referendum proceedings were instituted by the employers and upon the voters approving the Amendment, the Act finally became effective December 3, 1942. (Appendix, page 39.)

On March 19, 1943, Appellee Rowley filed his application for reopening on the ground of "AGGRAVATION" (his claim being previously closed). The five year "AGGRAVATION CLAUSE" was then in effect. Rowley was allowed $460.50 additional permanent partial disability compensation for his "AGGRAVATION" by virtue of two Washington Supreme Court

decisions in his favor. The entire question presented to this Court is whether or not the 1941 "AGGRAVATION CLAUSE" is constitutional.

III.

POSITION OF APPELLEE ROWLEY

Appellee Rowley concurs and reiterates the argument of the Appellee Department, as set forth in pages 9, 11, 12, 14 and 15 of its brief. However, Appellee Rowley, on behalf of himself, the Lumber & Sawmill Workers Union to which he belongs, and on behalf of those similarly situated, respectfully contends that this Court should decide the matter herein presented on a straight Constitutional basis and not upon the imposition of any technical rule to which the appellant may or may not be vulnerable. There are approximately thirty other cases of identical import now awaiting the final determination of the issues raised herein in the various Superior Courts of the State of Washington. If perchance this case should be decided upon technical grounds the Constitutional question would again have to be presented to this court at an additional expense and loss of time. This matter is, especially at this time, a matter of great interest to the public as well as to the employer and employee. Economic conditions may cause an increase in aggravation claims and therefore the Constitutionality should be promptly settled. It is therefore, the position of Appellee Rowley, with all due deference to the argument presented

by the Attorney General of the State of Washington to the effect that this case is not properly before this Court, that this Court decide whether or not the 5th and 14th Amendments to the Consittution has been violated by the enactment of the "AGGRAVATION CLAUSE" by the Legislature of the State of Washington in the proper exercise of its sovereign and police powers.

IV.

SUMMARY OF ARGUMENT

1. The 1941 "AGGRAVATION CLAUSE" is constitutional and does not constitute the taking appellant's property without due process of law.

2. The Washington Workmen's Compensation Act and the "Aggravation Clause" is strictly remedial in character and the shortening or lengthening of the statute in question only affects the remedy and not the right.

3. This precise question has heretofore been previously decided by the Supreme Court of the State of Washington and by this Court in *Mattsen v. Department of Labor and Industries, Campbell v. Holt* and *Chase Securities Corporation v. Donaldson.*

4. The Workmen's Compensation Act and the Aggravation Clause is a proper exercise of the police and sovereign powers of the State Constitution, and is not unreasonable, arbitrary or oppressive, so that the appellant has no vested right destroyed thereby.

V.

ARGUMENT

1. THE 1941 "AGGRAVATION CLAUSE" IS CONSTITUTIONAL AND DOES NOT CONSTITUTE THE TAKING OF APPELLANT'S PROPERTY WITHOUT DUE PROCESS OF LAW.

The Washington Workmen's Compensation Act abolished the common law actions for negligence for injuries received in extra-hazardous work and substituted therefor a purely statutory right by which the injured would be paid in accordance with the risk involved. Contributions to the fund are compulsory upon the employer. There is no contract in existence of any kind by reason thereof between the Employers and Employees which could be impaired. Consequently there is no contractual or vested right relationship existing either between the Employee and the State, or between the Employer and the State, or between the Employer and Employee. The fund is a creature of statute. It is a trust fund administered by the State for the benefit of injured workmen.

This question was considered by the Supreme Court of the State of Washington in *Mattsen v. Department of Labor and Industries,* 176 Wash. 345; 29 P. (2d) 675, in which it was stated, commencing on page 347, as follows:

> "The appellant contends that the law as it existed at the time of the injury is a part of the contract, and therefore that the amendment of 1927

impairs appellant's contractual rights in violation of Sec. 10, Article 1 of the Federal constitution, and that it also impairs the vested right of appellant to recover full compensation authorized by the statute in force at the time of the injury, thus violating the due process and the equal protection clauses of the fourteenth amendment to the Federal constitution and similar provisions of our state constitution.

"If this were an open question, it would be interesting to review the authorities and reason out an answer, but as it clearly appears that the questions here presented have already been directly decided by this court, the question is no longer an open one.

"The question here presented was necessarily presented and decided in each of the following cases: *Robinson v. McHugh,* 158 Wash. 157, 291 Pac. 330, and 160 Wash. 703, 295 Pac. 921; *Denning v. Quist,* 160 Wash. 681, 296, Pac. 145, and 172 Wash. 83, 19 P. (2d) 656; *Schmeiling v. Department of Labor and Industries,* 167 Wash. 692, 10 P. (2d) 229, and *Ferguson v. Department of Labor and Industries,* 168 Wash. 677, 13 P. (2d) 39.

"In each of the first two cases cited will be found a considerable discussion leading to the holding that the workman's rights under the law existing at the time of the injury are purely statutory rights, and may be taken away at any time by the legislature, and therefore the limitation contained in the act of 1927, which is here complained of, is purely remedial and destroys no vested right."

Subsequently the United States Supreme Court, in a review of the same case (293 U. S. 151) affirmed the same and which we will later discuss herein.

This Court has upheld the doctrine of *Campbell v. Holt,* 115 U. S. 620, and *Chase Securities Corporation*

v. Donaldson, ... U. S. ....., 89 L. Ed. (No. 15) 1109, 1113, 65 S. Ct. 1137, decided May 21, 1945.

2. THE WASHINGTON WORKMEN'S COMPENSATION ACT AND THE "AGGRAVATION CLAUSE" IS STRICTLY REMEDIAL IN CHARACTER, AND THE SHORTENING OR LENGTHENING OF THE STATUTE IN QUESTION ONLY AFFECTS THE REMEDY AND NOT THE RIGHT.

The Washington Act is unique in that there is no contract between the Employer and the Employee. The claimants are entitled to compensation by virtue of the provisions of the Act and for no other reason. And the peculiar part of the Washington Act is that a claimant must first establish his right to receive compensation by filing his claim within a year from the time of his injury. Once having established his right to compensation he has a continuing right thereto and thereafter. First he is entitled to time loss and then to permanent partial disability. If he suffers an *aggravation* of this injury he may apply to the Department of Labor and Industries in the time provided by the Statute, even though his claim has been closed. In the particular *aggravation clause* the time limit is five years from December 3, 1942.

It should be kept in mind that the "AGGRAVATION CLAUSE" as set forth in subdivision (h) applies to *readjustment of compensation, diminution or*

combination of disability after the rate of compensation shall have been established or terminated.

We believe that much of the difficulty presented herein is the failure to distinguish between a *right* and a *remedy*. Numerous Courts have differed over the application, logic and reasoning thereof.

Under the *"aggravation clause"* the claimants in Washington have the *right*, after their claim is closed, to apply for reopening of their claim, upon proof of aggravation once their claim has been established or terminated. This is the *right* of the Workmen conferred by the Act. It is a *right* they have to have their claim *readjusted* upon proof of aggravation. The claimants' *remedy* is the means by which their *right for readjustment (aggravation) may be enforced.*

Bouvier in his Law Dictionary, Volume II, Fourteenth Edition Revised, defines a *"right"* on page 484 as follows:

> "A well founded claim * * * the idea of a well founded claim becomes in law a claim founded in or established by the law: so that we may say a right in law *is an acknowledged claim.*" (Italics ours.)

Bouvier likewise defines a remedy in the same work on page 436 as follows:

> *"The means employed to enforce a right or redress an injury.* * * * Remedies are specific and cumulative; the former are those which can alone be applied to restore a right or punish a crime: for example where a statute makes unlawful what

was lawful before, and gives a particular remedy, that is specific, and must be pursued, and no other." (Italics ours.)

This court has distinguished between *rights* and *remedies* in *Chelentis v. Luckenbach Steamship Co., Inc.*, 247 U. S. 372, 384, to-wit:

> "The distinction between rights and remedies is fundamental. A right is a well founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury. * * * "

Consequently the workmen, or claimants, have the *right* to have their claims adjusted upon proof of the injuries which they sustain. The *remedy* is the method by which they may enforce their *right*.

Under the Washington Act claimants have three *remedies* to enforce their *rights*:

1. To apply within five years after the claim has been established or terminated for compensation.

2. To apply within five years after the effective date of the new act (effective December 3, 1942), upon compensation having been established or terminated prior to the effective date.

3. The Director of the Department of Labor and Industries may *at any time* upon his own motion, or upon application being made to him by the applicant, have his claim readjusted for aggravation.

4. There is still another class not heretofore touched upon for an allowance of compensation to a widow, chil-

dren or the beneficiaries upon a workman's death due to injuries. These were set forth in *Beels v. The Department of Labor and Industries,* 178 Wash. 301, 34 P. (2d) 917, in which the Washington Court held that under Rem. Rev. Statutes, § 7679 and § 7686, that while the law provides that a claim must be filed within one year from date of the injury that where the workman dies, his widow has an additional one year in which to file her claim.

The Washington Court has definitely decided that the "Aggravation Clause" is remedial, and that the bar of the Statute may be lifted without affecting vested rights, and that the statute of limitations applies both to common law and statutory causes of action. This is well set forth in *Herr v. Schwager,* 145 Wash. 101, 258 Pac. 1039, as follows:

> "The principal question is whether that act of the legislature operated to defeat a vested right of the appellants. In other words, the statute of limitations having once run, did the right of the appellants not to pay the obligation become vested.
>
> "Section 3 of art. 1 of the constitution of this state provides:
>
> " 'No person shall be deprived of life, liberty or property without due process of law.'
>
> "The Fourteenth Amendment to the constitution of the United States in part provides:
>
> " 'Nor shall any state deprive any person of life, liberty or property without due process of law.'
>
> "It will be noticed that the language of the two constitutional provisions is the same. In *Campbell*

v. Holt, 115 U. S. 620, the identical question here presented was before that court and it was held that the removal of the bar of the statute of limitations, after the statute had once run, did not conflict with the Fourteenth Amendment to the Federal constitution. It was there said, after reviewing the authorities:

"'In all this class of cases the ground taken is, that there exists a contract, but, by reason of no remedy having been provided for its enforcement, or the remedy ordinarily applicable to that class having, for reasons of public policy been forbidden or withheld, the legislature, by providing a remedy where none exists, or removing the statutory obstruction to the use of the remedy, enables the party to enforce the contract, otherwise objectionable.

"'Such is the precise case before us. The implied obligation of defendant's intestate to pay his child for the use of her property remains. It was a valid contract, implied by law before the statute began to run in 1866. Its nature and character were not changed by the lapse of two years, though the statute made that a valid defense to a suit on it. But this defense, a purely arbitrary creation of the law, fell with the repeal of the law on which it depended.

"'It is much insisted that this right to defense is a vested right, and a right of property which is protected by the provisions of the Fourteenth Amendment.

"'It is to be observed that the word vested right is nowhere used in the Constitution, neither in the original instrument nor in any of the amendments to it.

"'We understand very well what is meant by a vested right to real estate, to personal property, or to incorporeal hereditaments. But when we get beyond this, although vested rights may exist, they

are better described by some more exact term, as the phrase itself is not one found in the language of the Constitution.

"'We certainly do not understand that a right to defeat a just debt by the statute of limitations is a vested right, so as to be beyond legislative power in a proper case. The statutes of limitation, as often asserted and especially by this court, are founded in public needs and public policy—are arbitrary enactments by the law-making power.. *Tioga Railroad v. Blossburg and Corning Railroad*, 20 Wash. 137, 150. And other statutes, shortening the period or making it longer, which is necessary to its operation, have always been held to be within the legislative power until the bar is complete. The right does not enter into or become a part of the contract. No man promises to pay money with any view to being released from that obligation by lapse of time. It violates no right of his, therefore, when the legisature says, time shall be no bar, though such was the law when the contract was made. The authorities we have cited, especially in this court, show that no right is destroyed when the law restores a remedy which had been lost.'

"To that opinion, two of the members of the court dissented. The dissenting opinion recognizes that the running of the statute does not destroy the obligation but that, when the statute has once run, there is a vested right not to pay the obligation, even though it still exists. The question has been before the courts of last resort of a considerable number of the states and there is among them a division of authority, some taking the view of the majority opinion in *Campbell v. Holt, supra*, and others adopting the opposite view. Numerically the greater number are of the latter class. It would serve no useful purpose here to assemble and discuss these various cases. They may be readily found cited in any standard text on the subject and in the notes to cases that are annotated. The

> provision in the Federal constitution and that of this state being the same, while the holding in *Campbell v. Holt, supra,* is not necessarily controlling, it should, as stated in *State v. Buchanan,* 29 Wash. 602, 70 Pac. 52, 92 Am. St. 930, 59 L. R. A. 342, be given 'great weight.' It seems to us, after reading all the cases which have decided the question, that the better reasoning is with the majority view of the federal supreme court. If, as all courts hold, a statute of limitation operates upon the remedy only and does not destroy the obligation, we think that, by the running of the statute, a debtor does not acquire a vested right not to pay a debt which at no time has been destroyed."

To the same effect is *Campbell v. Holt,* which will be discussed later.

It should be observed that a workman need not comply with the statute of limitations as a condition precedent to his right of compensation, *because the statute merely affects his remedy.* Therefore, the general statute of limitations is entirely different from the one that we are considering, which after all is an ordinary statute of limitations *operating upon a right created by the statute. It is not a condition precedent to the right.* Appellant has confused the issue, as it is discussing a statute of limitations which is a *condition precedent to the right* (as contrasted to a condition subsequent) and in which there *rests only one remedy inherent in that right.*

The Washington State Supreme Court carefully considered the distinction between a *right and remedy* in *Lane v. Department of Labor and Industries,* 21

Wash. (2d) 420, 151 P. (2d) 440, 77 A.L.R. 1347, Am. Jur. 44, commencing on page 424 as follows:

"The employers assert that after a claim of the kind before us is once barred, it cannot be revived by subsequent legislation because a right of immunity in favor of the employer arises which constitutes a vested right and its impairment is protected by constitutional inhibitions. The claimants and the attorney general contend that the act relates only to the remedy of the workman and does not affect any vested right of the employer. Many authorities are cited by the respective counsel. There is a conflict of authority on the general subject, but much of it disappears when the nature and scope of the different statutes are considered.

"There are two types of statutes which the courts had to apply. One of them is the statute which either by its plain terms or by the construction given it by the court makes the limitation of time inhere in the right or obligation rather than the remedy. It is sometimes referred to as a statute of non-claim, and, strictly speaking, is not a statute of limitations at all. In its usual form the statute creates some right or obligation and a time is fixed within which the right must be asserted or the obligation sought to be enforced, or the same will be barred. When the limitation period expires the right or obligation is extinguished and cannot be revived by a subsequent statute enlarging the time limitation. Illustrations of nonclaim statutes in this state are those providing for liens of laborers and materialmen, claims against estates of deceased persons, and claims for damages against municipal corporations.

"The courts seem to be in substantial accord that a statute of limitations cannot enlarge the time for the commencement of an action when the time limitation therefor is fixed by contract; also in cases where one has been in possession of property for the period required to bar an action by the

real owner for its recovery, the theory being that, by the lapse of the statutory time, title to the property has passed and it cannot be divested by a statutory revival of the right of action to recover its possession. This court has held that the right to enforce a lien for street improvements cannot be enlarged by statute after the time limit therefor has expired. *Seattle v. DeWolfe,* 17 Wash. 349, 49 Pac. 553. In *Earle v. Froedtert Grain & Malting Co.,* 179 Wash. 341, 85 P. (2d) 264, and *Peeples v. Hayes,* 4 Wn. (2d) 253, 104 P. (2d) 305, it was decided, with reference to a statute relating to actions to recover on the ground of unlawful preferences, that it is not in its strict sense one of limitation at all, but one that goes to the right to recover, and not merely to the remedy. This is the theory of the leading case of *William Danzer & Co. v. Gulf & I. R. Co.,* 268 U. S. 633, 45 S. Ct. 612, 69 L. Ed. 1126, relied on by counsel for the employers.

"The other type of statute is one which relates only to the remedy and has nothing to do with any right or obligation, does not inhere in either, and is wholly independent of them. It is a statute of limitations in its strict sense, and, although a remedy may become barred thereunder, the right or obligation is not extinguished. It is a statute of repose.

"There is no constitutional inhibition against the revival of a barred remedy. The leading case on the subject is *Campbell v. Holt,* 115 U. S. 620, 6 S. Ct. 209, 29 L. Ed. 483. We have adopted and followed the rule of that case in *Herr v. Schwager,* 145 Wash. 101, 258 Pac. 1039. The distinctions between the different types of statutes as bearing upon the question of whether a claim against which a limitation has run can be revived by a subsequent limitation statute, will be found in the annotations and the cases to which they are appended in 36 A. L. R. 1316, 46 A. L. R. 1101, 67 A. L. R. 297, 78 A. L. R. 1294, 133 A. L. R. 384.

"There are cases contrary to *Campbell x. Holt* and *Herr v. Schwager* which hold that, if the remedy is barred, the immunity from suit is a right that cannot be impaired by a statute o revival but we definitely declined in the *Herr* case to follow them and we have not departed from the doctrine of that case. * * * The act took away from the workman his common-law right of action for negligence. In its place it provided for industrial insurance. The employer is taxed to create and maintain an accident fund. The state administers the fund through one of its agencies. The act creating the right of the workman to compensation fixed a time limit within which he must make his claim after the day upon which the injury occurred or the right thereto accrued and provided that if he did not do so such claim would not be enforcible; but it did not fix any time limit within which an injured workman whose rate of compensation had been established or his compensation had been terminated might apply for an adjustment in the event of aggravation of his injury thereafter. A rovision was made that the department might, 'upon its own motion readjust for further application the rate of compensation . . .' The law remained this way until 1927, when it was provided that a workman claiming aggravation must make claim therefor within a three-year period.

"The employer has never had anything to say about when a claim for aggravation of injury may be made, and the fact that after sixteen years of operation of the law the legislature decided to require the injured workman claiming aggravation to make his claim within a limited time, did not change the status of the employer with reference to the accident fund. It did not thereby create a statute of nonclaim. It merely affected the remedy of the injured workman. It was enacted for the benefit of the department so that it would not have to consider stale claims, when perhaps the securing of evidence as to their merit might be difficult

or impossible. The claim of the workman is not one against the employer and the limitation period was not made for the employer's benefit.

"The limitation periods fixed by the acts of 1927, 1929 and 1941 have no relation to the right to a readjustment of compensation created by the act of 1911, and do not inhere therein, but relate only to the remedy of the claimant. The lapse of time limitation does not build up any immunity in favor of the employer or bring into being any vested right that can be affected if the time limitation is changed. We held in *Matson v. Department of Labor and Industries,* 176 Wash. 345, 29 P. (2d) 675, that no vested right of an injured workman was affected when a limitation period was provided where none had existed before, and the same authority exists to enlarge the time for making claims for readjustment, and, for the same reasons given in that case, no vested right of an employer would be affected.

"The act of 1941 before us is so plain and all inclusive in its wording as not to need construction. It applies to all applicants for readjustment whose compensation has been established or terminated, and in passing it the legislative authority has encountered no constitutional inhibitions."

The Washington Court has further held in *Smith v. Department of Labor and Industries,* 8 Wn. (2d) 587, 113 P. (2d), 57, that the 1927 "Aggravation Clause" does not limit the time in which the Director of the Department and Labor and Industries may in his own discretion reopen the claim upon his own motion, and that the limitation as to time applies only to the application of the beneficiary. Thus it will be seen that a claimant's right to compensation is *never dead and never dies.* The

decision of the Director is absolutely and not reviewable by any court.

That the Legislature of the State of Washington has the power to enlarge or decrease the claimant's existing statutory rights is well set forth in *Denning v. Quist*, 160 Wash. 681, 296 Pac. 145, at page 686, as follows:

> "This act, according to the declaration of legislative policy therein contained, and its manifest purpose, should be classed *as remedial legislation.* Section 1, *supra,* is comprehensive in its terms, and does away with rights of action previously existing in favor of injured workmen, including *rights* theretofore existing at common law. *Rights of action* vested by the act in favor of injured workmen (*Robinson v. McHugh, supra*) became thereafter purely *statutory rights,* not common law rights. The 1927 amendment (chap. 310, Laws of 1927 p. 813), as stated in the case of *Robinson v. McHugh, supra, somewhat enlarged the remedy existing under the original act of* 1911 *in favor of the workmen* injured by the negligence or wrong of one not in the same employ. *This amendment, however, did not re-establish in favor of the injured workman any common law right, but simply enlarged his existing statutory right. This right being purely statutory, it was competent for the legislature to limit the same, as was accomplished by the* 1929 *amendment ,supra, and we are satisfied that the correct rule was laid down by this court in the case of Robinson v. McHugh, supra.*" (Italics ours.)

That court adhered to its previous holding in the second case on appeal of *Denning v. Quist*, 172 Wash. 83, 19 P. (2d) 656, in which it further stated on page 86 thereof, as follows:

"In *Robinson v. McHugh,* 158 Wash. 157, 291 Pac. 330, we, in effect, held that the excepted rights of action upon which a workman might sue in the courts for injuries suffered by him while engaged in extra-hazardous employment became, in legal effect, statutory rights of action, and not common law rights of action. That decision was adhered to by the court sitting *En Banc* upon a rehearing of that case. 160 Wash. 703, 295 Pac. 921. Our *En Banc* decision in *Denning v. Quist,* 160 Wash. 681, 296 Pac. 145, was also to the same effect. *Therefore, it is settled law that whatever right of action in the courts appellant may now have, or heretofore had, since the original enactment of chapter* 74, *Laws of* 1911, *p.* 345, *Rem. Rev. Stat., Sec.* 7673, *is a statutory right, and not a common law right.* Whether or not he now has, under chapter 90, Laws of 1931, p. 263, Rem. Rev. Stat., Sec. 7697, a restored statutory right of action taken from him by chapter 132, Laws of 1929, p. 325, Rem. Rev. Stat., Sec. 7675, is the question to decide." (Italics ours.)

It will be noted that that court stated that under the circumstances of the *Denning v. Quist* case, 160 Wash. 681, 296 Pac. 145, that the *statutory rights of action taken from him could be restored,* and that court said on page 90 thereof, as follows:

"It is contended in his behalf that the above italicized language of chapter 90, *supra, restored to him his right of action in the courts existing up to the time that chapter* 132, *Laws of* 1929, *p.* 325, *became effective, which, as we held in Denning v. Quist, supra, had deprived him of all right of action i nthe courts to recover for his injury against a third party situated as were respondents in their relation to his extra-hazardous employment.* The language of the 1931 amendment relied upon is:

" 'This act shall not affect any cause of action existing at the time said chapter 132 of the Session Laws of 1929 became effective, or the right ot take an appeal and/or bring an action thereon, or any appeal pending, or right of appeal existing at the time said chapter 132 of the Session Laws of 1929 became effective.' Rem. Rev. Stat., Sec. 7697.

"Although the language above quoted is somewhat vague and uncertain, all parts of an act may be considered to ascertain the legislative purpose, and it is manifest by the title to the act that it was the purpose of the legislature to 'reserve to all parties having causes of action existing at the time chapter 132, *supra,* took effect, 'to bring and prosecute proceedings or action thereon,' *to restore or reserve to some person or persons having some kind of a right of action, such right. It would seem that the rights intended to be restored, or reserved, or not affected, were such as that of appellant here. It is a rule of statutory construction almost universal that it is the duty of the courts to give such construction to the language of a statute as will make it purposeful and effective, rather than futile and meaningless.*

"Unless, as above indicated, it was the sole purpose of the legislature in enacting chapter 90, *supra,* to permit persons having causes of action against third parties to recover damages from them on account of their negligence, although that was a statutory action, or rather a statutory election, the legislation was meaningless and ineffective." (Italics ours.)

In this respect, the court should consider the majority and minority holdings in the case of *Reeder v. Crewes,* 199 Wash. 40, 90 P. (2d) 267.

Thus it will be seen that the ordinary statute of limitations, be it at common law or by statute, is *reme-*

dial in character, and that the bar of the statute may at any time be enlarged or decreased, or lifted at any time without effecting any vested rights.

That the Workmen's Compensation Act of Washington is remedial should be so firmly established that citation thereof is unnecessary. The rule is well set forth in *Nelson v. Department of Labor and Industries*, 9 Wash. (2d) 621, 115 P. (2d) 1014, at page 628, when that Court said:

> "As a prefatory remark, it seems advisable to recall to mind that workmen's compensation acts are considered *remedial in character, the provisions of which should be construed broadly and liberally in order to effectuate their purpose, which, among other things, is to benefit the working man. Hilding v. Department of Labor and Industries*, 162 Wash. 168, 298 Pac. 321; *State ex rel. Crabb v. Olinger*, 196 Wash. 308, 82 P. (2d) 865; *Campbell v. Department of Labor and Industries*, 2 Wn. (2d) 173, 97 P. (2d) 642." (Italics ours.)

To the same effect is *Hilding v. Department of Labor and Industries*, 162 Wash. 168, 175:

> "This court is committed to the doctrine that our workmen's compensation act should be liberally construed in favor of its beneficiaries. It is a humane law and founded on sound public policy, and is the result of thoughtful, painstaking and humane considerations, and its beneficent provisions should not be limited or curtailed by a narrow construction."

Likewise the Act was held remedial in *Mattson v. Department of Labor and Industries*, 176 Wash. 345,

29 P. (2d) 675; 293 U.S. 151, which will be discussed more fully herein.

3. THE PRECISE QUESTION HAS HERETOFORE BEEN PREVIOUSLY DECIDED BY THE SUPREME COURT OF THE UNITED STATES IN THE *MATTSON V. DEPARTMENT* CASE, *CAMPBELL V. HOLD* AND *CHASE SECURITIES CORPORATION V. DONALDSON*. THESE THREE CASES ARE DETERMINATIVE OF ALL THE QUESTIONS HEREIN PRESENTED, AND THE CAREFUL ANALYSIS OF EACH CASE SHOULD BE MADE.

(A.) *The Mattson case.* As heretofore stated the Mattson case is determinative of the question that the Washington Workmen's Compensation Act is *remedial*, and that the Legislature may enlarge or decrease the Statute of Limitation and that it is a proper exercise of the police powers of the State. The claimant in that case was injured in February of 1927, which was before the 1927 limitation was first placed upon a workman in which to file an aggravation claim. His claim was allowed and closed in January of 1928. In May of 1933 (after the 3-year period had expired), the claimant made application to reopen his claim for aggravation of previous injuries, and his application was denied on the ground that the three-year statute of limitations had run and all his right were barred. The Washington Supreme Court affirmed the judgment of the lower Court, upholding the decision of the Depart-

ment of Labor and Industries for the reason the workman's right under the law existing at the time of the injury were purely statutory and could be taken away at any time, and that the limitation being purely remedial destroyed no vested right. This case was appealed to this Court, which affirmed the same.

It should be noted that in the Mattson case it was the *workman* or *claimant* who alleged that he had a vested right to apply for aggravation, and that it was property, and that its enforcement could not be abolished or limited without violating the due process of the clause of the 14th Amendment of the Federal Constitution. This Court held, stating at page 154:

> "The Washington Workmen's Compensation Act is compulsory. In the exercise of the State's police power it abolishes common law actions for negligence, imposes upon industry a levy calculated in accordance with the risk of injury to workmen, places the money collected in a state-administered fund, and substitutes for the employee's common law right of action a purely statutory right to payment from the fund of a sum adjusted to the character and extent of the injury.
>
> "That the State may impose reasonable conditions upon the assertion of the claim does not admit of argument. Considerations justifying a reasonable limitation of time within which further increase of compensation due to aggravation of condition may be claimed are so obvious as hardly to require statement. Appellant does not urge to require statement. Appellant does not urge that the prescription of a period of three years for presenting such a claim is unreasonable, but that it is

beyond the State's power. The section under attack merely limits the time for the assertion of the right, effects the remedy only, and that in a manner not unreasonable, arbitrary or oppressive. Such a limitation of time within which appellant's remedy must be pursued does not deprive him of due process."

If it is Constitutional for the *workman* to have the time in which to file his claim for aggravation cut from an *unlimited time* (as provided by the Act from 1911 to 1927) to three years (as provided by the 1927 Amendment) then it is just as Constitutional to *grant him an additional five years* from December 3rd, 1942, in which to file his claim for aggravation upon his claim being heretofore established and terminated. If the *workman* did not have a vested right taken away from him as he contended in the Mattson case, then *neither has the employer a vested right in the present controversy of which he is being unlawfully and unconstitutionally deprived.* The Workmen's Compensation Act must be considered in its entirely and if in any part it is unconstitutional, it is all unconstitutional, as it must be considered as a whole and not part by part.

(B.) *Campbell v. Holt.* This was an action on contract for payment of money. The statute of limitations ran against the claim and thereafter a new constitution was adopted by Texas extending the statute of limitations. This Court held that no right to real or personal property were involved and that therefore the State

Legislature could repeal or extend the statute of limitaton after the rght of acton was barred, as the statute of limitations *only barred the remedy and did not destroy the right,* and consequently it is not in contravention of the Fourteenth Amendment.

The Washington Supreme Court in *Herr v. Schwager,* 145 Wash. 101, 258 Pac. 1039, held that the doctrine adopted by Campbell v. Holt, by stating in *Lane v. Department of Labor and Industries, supra,* on page 426 of the opinion:

> "There are cases contrary to Campbell v. Holt and Herr v. Schwager, which hold that, if the remedy s barred, the immunity of the suit is a right that cannot be impaired by a statute of revival, *but we definitely declined in the Herr case to follow them, and we have not departed from the doctrine of that case."* (Italics ours.)

The appellant contended in the two respective appeals of the instant case before the Washington Supreme Court that Campbell v. Holt had no application to the issues herein presented because the statute of limitations in the Campbell-Holt case involved the common law right as distinguished from the statutory right, and further that the Campbell-Holt case was the minority doctrine and was impliedly overruled or distinguished in *William Danzer & Co. v. Gulf & S.I.R. Co.,* 268 U.S. 633, 45 S. Ct. 612, 60 L. Ed. 1126.

Much relance was placed on these facts by the appellant. However. since the instant case was appealed

this court did decide and determine the matter in *Chase Securities Corporation v. Donaldson, Supra.*

(C.) *Chase Securities Corporation v. Donaldson.* The State of Minnesota extended the statute of limitations as a defense under an action instituted under the Blue Sky Law. It was contended that this constituted a violation of the Fourteenth Amendment, and that Campbell v. Holt had been superseded. However, this Court adhered to the doctrine of Campbell v. Holt, and held that the lifting of the bar of the statute of limitations so as to restore a remedy lost through mere lapse of time is *per se* not in violation of the Fourteenth Amendment.

Appellant apparently erroneously bases its entire contention on the fallacious premise that the Workmen's Compensation Act created a new right in the workman and imposed a new liability upon the employer, and that when the right thus created by statute also specifies the time in which the right must be asserted, the faiure to assert the right within the time destroys the right, and that once the right is destroyed it cannot be thereafter revived. We believe that this is effectively answered by the language of the Washington Supreme Court in *Lane v. Department of Labor and Industries, supra,* on page 426, in which it said:

> "The other type of statute is one which relates inly to the remedy and has nothing to do with the right or obligation, and does not inhere in either,

> and is wholly independent of them. It is a statute of limitations in a strict sense, and, although a remedy may become barred thereunder, the right or obligation is not extinguished. It is a statute of repose. There is no Constitutional inhibition against the revival of a barred remedy."

and on page 428,

> "* * * It merely affected the remedy of the injured workman."

and further on page 429,

> "The limitation periods fixed by the acts of 1927, 1929 and 1941 have no relation to the right to a readjustment of compensation created by the act of 1911, and do not inhere therein, but relate only to the remedy of the claimant. The lapse of time limitation does not build up any immunity in favor of the employer or bring into being any vested right that can be affected if the time limitation is changed."

The compliance with the statute is not a condition precedent to the right created by the statute. The statute only operates upon the right. The claimant has the right to have his claim adjusted for aggravation upon proof, and he has three remedies, which we have set forth heretofore, by which the right may be enforced. All the cases cited by the appellant are thus distinguished as they are entirely based upon the proposition that the statute of limitations is a condition precedent to the right as contrasted to a condition subsequent, and in which there is only one remedy inherent in that right.

4. THE WORKMEN'S COMPENSATION ACT AND "AGGRAVATION CLAUSE" IS A PROPER EXERCISE OF THE POLICE AND SOVEREIGN POWERS OF THE STATE AND FEDERAL CONSTITUTIONS AND AMENDMENTS THERETO AND IS NOT UNREASONABLE, ARBITRARY OR OPPRESSIVE, AND APPELLANT HAS NO VESTED INTEREST THEREIN.

The Washington Workmen's Compensation Act first enacted by the 1911 Legislature, provided in Section 1, its declaration of police power, and did provide as follows:

> *"The common-law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair.* Its administraton has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. *The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided* regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this

act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the State over such causes are hereby abolished, except as in this act provided. (Italics ours.)

and it was specifically stated therein that the State of Washington was exercising its police and sovereign powers. The Washington Supreme Court has held in an unbroken line of decisions that the enactment of the Washington Compensation Act is a proper exercise of the police and sovereign powers, and a few of the cases in conformity therewith are as follows:

State ex rel. Davis-Smith Co. v. Clausen, 65 Wash. 156, 117 Pac. 1101;

Fisher Flouring Mills Co. v. Brown, 109 Wash. 690, 187 Pac. 399;

State ex rel. Lane v. Fleming, 129 Wash. 646, 225 Pac. 647;

Seattle v. Gervasi, 144 Wash. 429, 259 Pac. 328;

Shea v. Olson, 185 Wash. 143, 53 Pac. (2d) 615;

Mountain Timber Co. v. Washington, 243 U. S. 237.

In the latter case this Court stated:

> In the present case the Supreme Court of Washington (75 Washington, 581, 583), sustained the law as a legitimate exercise of the police power, referring at the same time to its previous decision in the *Clausen Case,* 65 Washington, 156, 203, 207, which was rested principally upon that power, but also ((pp. 203, 207), sustained the charges, imposed upon employers engaged in the specified industries as possessing the character of a license tax for revenue and a tax for purposes of regulation. * * * "

Again, at page 241 of the same case, we find this language:

> "As to the first point: The authority of the States to enact such laws as reasonably are deemed to be necessary to promote the health, safety, and general welfare of their people, carries with it a wide range of judgment and discretion as to what matters are orf sufficiently general importance to be subjected to state regulation and administration. *Lawton v. Steele,* 152 U. S. 133, 136. 'The police power of a State is as broad and plenary as its taxing power.' *Kidd v. Pearson,* 128 U. S. 1, 26. In *Barbier v. Connolly,* 113 U. S. 27, 31, the court, by Mr. Justice Field, said: 'Neither the (fourteenth) amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity. * * * '"

Likewise in *Whitaker v. Green River Coal Co.* 122, S.W. (2d) 1012, at pages 1014 and 1016, it was said:

> "The 'due process' clause of the constitution does not operate as a limitation upon the *reasonable* and proper exercise of the police power of the state. To determine whether or not regulation of the mining industry comes within the purview of the police power, we have only to exercise our common knowledge which tells us that this is a highly hazardous industry, involving the safety of thousands of miners and the preservation and use of highly valuable property continuously in danger of destruction or damage from the careless use of adjoining properties. * * *"

To the same effect is *Mattsen v. Department of Labor and Industries, Supra*. In the instant case the Washington Supreme Court held in *Lane v. Department of Labor and Industries, Supra,* page 427:

> "The workmen's compensation act and its amendments is an exercise of the police power of the state and in their enactment the legislature did not encounter many of the constitutional limitations it might have otherwise. *Raymond Lumber Co. v. Raymond Light &Water Co.,* 92 Wash. 330, 159 Pac. 133; *Shea v. Olson,* 185 Wash. 143, 53 P. (2d) 615. In the latter case we said, p. 153:
>
> "We next consider the provisions of Art. I, §§3 and 12 of the state constitution and the fourteenth amendment of the United States Constitution, relating to due process and the equal protection of the laws.
>
> "None of these constitutional provisions apply to laws enacted by a state legislature in the exercise of its police power. We have repeatedly so held." (Citing authorities.)

We once more refer to the declaration contained in the original Workmen's Compensation Act of 1911, which stated in part in Section 1:

> "The remedy of the workmen has been uncertain, slow and inadequate. Injuries in such work, formerly occasional, have become frequent and inevitable. The welfare of the State depends upon its industries, and ever more upon the welfare of its wage workers."

These words are as true today as when they were written in 1911, and we respectfully submit that this Court should immediateley give effect to subdivision

(h) of the "Aggravation Clause" as intended by the Legislature of 1941, adopted by the Electorate in 1942, and as construed by the Supreme Court of the State of Washington in 1944 and 1945.

The appellant has contended that it has a vested interest in the accident fund of the State of Washington and by reason of the additional compensation which has been ordered paid by the Supreme Court of the State of Washington, and payment thereof has been suspended by supersedeous bond by a direct appeal to this Court. The Employer contends that its payments are more than a license tax. Various cases are thereafter cited in support of this contention. However, whatever may have been the deviations by the Washington Courts, all of these cases have been superseded by *Lane v. Department of Labor and Industries, Supra,* which forever definitely decides the issue in these words on page 427:

> When the original act of 1911 came before the court, it was decided that the money an employer paid into the accident fund was a license tax on his privilege to carry on his business. *State ex rel. Davis-Smith Co. v. Clausen,* 65 Wash. 156, 117 Pac. 1101. This view was approved in *Mountain Timber Co. v. State of Washington,* 243 U. S. 219, 237, 61 L. Ed. 685, 37 S. Ct. 260, Ann. Cas. 1917D, 642, in which it is said:
>
> "In the present case the Supreme Court of Washington (75 Washington, 581, 583), sustained the law as legitimate exercise of the police power, referring at the same time to its previous decision

in the *Clausen Case,* 65 Washington, 156, 203, 207, which was rested principally upon that power, but also (pp. 203, 207), sustained the charges imposed upon employers engaged in the specified industries as possessing the character of a license tax upon the occupation, partaking of the dual nature of a tax for revenue and a tax for purposes of regulation."

We followed this viewpoint in *State v. Vinther,* 176 Wash. 391, 29 P. (2d) 693; and the same thought is the basis of *State ex rel. Crabb v. Olinger,* 196 Wash. 308, 82 P. (2d- 865.

The fact that an employer has a right to appear and contest a claim of an injured workman and to take an appeal from an adverse decision does not give him any right in or to the accident fund, and we have never held that he has any so-called vested right therein. The reason he may contest a claim is that his cost experience would be affected by an unlawful use of the fund. When it is finally decided that a claimant is entitled to compensation; all further interest on the part of the employer ceases, and all procedural and administrative questions are of no concern of his, but lie only between the claimant and the department.

The Washington Supreme Court has also subsequent to the *Lane Case, supra,* held to the same effect in *Monroe Logging Company v. Department of Labor and Industries,* 21 Wash. (2d) 800, 153 P. (2d) 511, saying:

"The position is without foundation. The premiums payable for industrial insurance are excise taxes. *State ex rel. Davis-Smith Co. v. Washington,* 243, U. S. 219, 61 L. Ed. 685, 37 S. Ct. 260; Lane v. Department of Labor and Industries, 121 Wash. Dec. 395, 151 P. (2d) 440. That an admin-

istrative officer has no power to waive the collection of taxes provided for by legislative enactment, is elementary."

The time limitation is not unreasonable, arbitrary or oppressive. This seems especially to be true in view of the fact that this Court has previously held in the *Mattsen Case* that the due process and equal protection clauses of the 14th Amendment were not infringed nor any vested right of the claimant impaired when the time limitation was changed from an unlimited time to three years within which to make application for reopening for aggravation. As stated before, if the workmen's rights are not impaired by shortening the period from an unlimited time to three years, then the employer's rights are not impaired by enlarging the time limitation. The employer has no vested right merely because the workmen's remedy has been extended and liberalized.

It should be emphasized that the appellant has no vested interest of any kind in the accident fund whatsoever. Any payments or increased premiums by reason of cost experience are paid into the fund. Circumstances in the industry may be such that the premiums would be decreased so that there would not be any increased payments by the employer in question. The matter and amount of payments is entirely between the State as custodian of the Trust Fund and the employees. Surely it cannot successfully be stated that the

employer has any vested rights therein and that his property is being unlawfully taken without due process of law. No right is created out of old circumstances to appellant's damage. The remedy of adjustment is merely enlarged.

CONCLUSION

By virtue of the foregoing reasons, the judgment of the Washington State Supreme Court should be affirmed upon the ground that the employer has no vested right by decreasing or enlarging of the time limitation in which aggravation claims can be filed, and that the Washington Act is not in violation of the Fifth and Fourteenth Amendments to the Federal Constitution.

Respectfully submitted,

JAY C. ALLEN,
CHARLES R. CAREY,
Attorneys for Appellee, Ralph Rowley.

APPENDIX

Chapter 74, Laws of 1911 (the Original Washington Workmen's Compensation Act):

The title "Relating to Compensation of Injured Workmen," and the heading therof reading as follows:

"An Act relating to the compensation of injured workmen in our industries, and the compensation of their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the nonobservance of regulations for the prevention of such injuries and for violation of its provisions, *asserting and exercising the police power in such cases,* and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing sections 6594, 6595 and 6596 of Remington's and Ballinger's Annotated Codes and Statutes of Washington relating to employes in factories, mills, or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for the violation thereof.

"Be it enacted by the Legislature of the State of Washington:

"Section 1. Declaration of Police Power.

"The common-law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the

cost of the employer has reached the workman and that little only at large expense to the public. *The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided* regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided i nthis act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the State over such causes are hereby abolished, except as in this act provided." (Italics ours.)

Section 5, paragraph (h) thereof:

"(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payments."

Subdivision (h), section 4, Chapter 310, Session Laws, 1927:

"(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been estab-

lished or compensation terminated, in any case the director of labor and industries, through and by means of the division of industrial insurance, may, upon the application of the beneficiary, made within three years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: *Provided,* Any such applicant whose compensation has heretofore been established or terminated shall have three years from the taking effect of this act within which to apply for such readjustment."

Subdivision (h) section 1, Chapter 209, Laws of Washington, 1941:

(h) If aggravation, diminution or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the Director of Labor and Industries, through and by means of the Division of Industrial Insurance, may, upon the application of the beneficiary, made within *five* years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment. *Provided, Any such applicant whose compensation has heretofore been established or terminated shall have five* (5) *years from the taking effect of this act within which to apply for such readjustment."* (Italics ours.)

SUPREME COURT OF THE UNITED STATES.

No. 53.—October Term, 1945.

Gange Lumber Company, Appellant, *vs*, Ralph Rowley and Department of Labor and Industries of the State of Washington.	Appeal from the Supreme Court of the State of Washington.

[November 13, 1945.]

Mr. Justice Rutledge delivered the opinion of the Court.

This appeal is from a judgment of the Supreme Court of Washington rendered after the case journeyed twice through the state's appropriate administrative and judicial tribunals. 21 Wash. 2d 420; 122 Wash. Dec. (No. 8) 234.[1] The judgment sustained an award made by the appellee, Department of Labor and Industries, in favor of Rowley, the individual appellee. The award was for compensation on account of the aggravation, by 1943, of injuries originally sustained by Rowley in 1937 in the course of his employment by appellant. A prior award for the original injury, made in 1938, became "final"[2] without appeal and is only indirectly in issue. Both awards were made pursuant to the state's statutory provisions for industrial insurance and were payable from a publicly administered fund maintained, as the statute required, by "premiums" or contributions of employers.[3] Ap-

[1] The procedure for making claims before the Department of Labor and Industries and for obtaining judicial review is sketched below in note 10. On the first journey of the cause to the Supreme Court, the Department and the Superior Court held that the claim was out of time and that it should be dismissed. After reversal of these rulings, the case was returned to the Department for the making of an award and its order accomplishing this was affirmed by the Superior and Supreme Courts, as against appellant's constitutional objections urged here and others.

[2] The award became final, for purposes of review, in so far as the amount of compensation allowable for the original injury as proved in that proceeding was concerned. But it was at all times subject to being reopened for the allowance of additional compensation on account of aggravation of the original injury taking place after the original award. See note 5; also notes 14, 15 and text.

[3] Washington's original Workmen's Compensation (or more properly Industrial Insurance) Act was adopted in 1911, Laws of Wash., 1911, c. 74 (Remington's Revised Statutes of Washington, §§ 7673 *et seq.*). For

pellant claims that the statute has been applied, in respect to its liability for the payment of premiums, in a manner to deprive it of property without due process of law, contrary to the prohibition of the Fourteenth Amendment.

The controversy results from a 1941 amendment of the Washington Industrial Insurance Act,[4] by which the time allowed for the beneficiary of an award to apply for additional compensation on account of aggravation of his injury was extended from three to five years after the establishment (or termination) of compensation or, by virtue of a proviso, to five years from the amendment's effective date.[5] Since Rowley's application presently involved was made in time only by virtue of the proviso,[6] appellant asserts that the amendment has been applied retroactively to revive a claim barred by the preexisting law, to its substantial det-

---

purposes material to the disposition of this cause, the Act was amended in 1927, by placing a limit of three years from specified dates upon the filing of claims by injured workmen for aggravation of injuries [Laws of Wash., 1927, c. 310, p. 844; Rem. Rev. Stat. Wash., 1932, § 7679(h), amending Laws of 1911, c. 74, § 5(h)], and in 1941 (effective December 3, 1942) by extending the three-year period to five years. Laws of Wash., 1941, c. 209, § 1; Rem. Rev. Stat. Wash., 1941 Perm. Supp., § 7679, amending subsection (h) of the 1927 amendment.

[4] See note 3.

[5] The provision, as amended in 1941, was as follows: "If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the director of labor and industries, through and by means of the division of industrial insurance, may, upon the application of the beneficiary, *made within five years after the establishment or termination of such compensation, or upon his own motion*, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: *Provided, Any such applicant whose compensation has heretofore been established or terminated shall have five years from the taking effect of this act within which to apply for such readjustment.*" Laws of Wash., 1941, c. 209, § 1; Rem. Rev. Stat. Wash., 1941 Perm. Supp., § 7679(h). (Emphasis added.)

The 1927 amendment, see note 3, was identical except for use of the word "three" where "five" is employed. The original provision, in force from 1911 to 1927, was as follows: "If *aggravation, diminution, or termination* of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case *the department may, upon the application of the beneficiary or upon its own motion, readjust* for future application *the rate* of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payments." Laws of Wash., 1911, c. 74, § 5(h). (Emphasis added.)

[6] The original injury was incurred July 13, 1937. The original award, of $307.50, for permanent partial disability of the right hand, became "final," cf. note 2, March 9, 1938. The 1927 amendment, see notes 3 and 5, was in force at that time and until December 3, 1942, when the 1941 amendment became effective. Rowley's claim for aggravation was not filed until March 19, 1943, more than five years from the time the original award was "closed," but less than five years from the date the 1941 amendment, with the proviso, became effective.

riment; and thereby, under this Court's decision in *Danzer & Co.* v. *Gulf & S. I. R. Co.*, 268 U. S. 633, the claimed unconstitutional consequences have been created.

Appellees have responded by relying upon *Campbell* v. *Holt*, 115 U. S. 620, and *Chase Securities Corp.* v. *Donaldson*, 325 U. S. —. They have urged that as applied the statute has produced no unconstitutional injury or detriment to any substantive interest of appellant; and that the only effect has been to modify its procedural rights, in particular by supplying judicial review of awards for aggravation where previously only an administrative remedy was available to the employee.[7] As all of these contentions are somewhat interrelated, precise consideration requires more explicit statement of the statutory scheme in its application to the facts.

Washington's plan of industrial insurance is much like that of Ohio, briefly described in *Copperweld Steel Co.* v. *Industrial Insurance Commission*, 324 U. S. 780; cf. *Mattson* v. *Department of Labor*, 293 U. S. 151. The state Supreme Court has characterized the system as neither an employers' liability act nor an ordinary workmen's compensation act, but rather as an industrial insurance statute having all the features of an insurance act. *Stertz* v. *Industrial Insurance Commission*, 91 Wash. 588, 594-595. Salient characteristics, for present purposes, include the maintenance and administration by the state of an accident fund, which is paid into the state treasury by employers pursuant to annual assessments made by the Director of Labor and Industries, through the Supervisor of Industrial Insurance. Except in situations not presently material,[8] injured employees are deprived of common-law causes of action against their employers and are restricted to recovery from this fund as reparation for injuries sustained at work.

The Director is empowered to promulgate, change and revise rates to be paid by employer contributors. The scheme for determining the rates is somewhat complicated, requiring classification of contributors and their work according to its hazard; and adjustment of premiums to take account of the cost experience not only of each class but also of each employer, as well as the condi-

[7] Cf. note 18.

[8] E. g., the Act provides that an employer, defaulting in his payment of premiums, shall be liable to suit by the injured workman, as prior to 1911, but without specified defenses then available. Rem. Rev. Stat. Wash., § 7676.

tion of the fund. Rem. Rev. Stat. Wash., § 7676. A basic premium rate, to apply for the ensuing calendar year, is fixed annually for each class, which takes account of its cost experience over a two-year period and of the condition of the class fund. At the same time a premium rate of each employer is fixed with relation to each class, also to apply for the ensuing year, which takes into consideration the employer's average cost experience "for each workman hour reported by him during each fiscal year . . . over the five year period" immediately preceding the determination. The actual premium rate the employer is required to pay consists of 40 per cent of the basic rate plus 60 per cent of his cost rate as thus determined; but in no event is the total rate to exceed 160 per cent of the basic rate.

Premiums when paid are placed to the credit of the employer in the appropriate fund, but become the exclusive property of the state earmarked and appropriated for the specific uses provided by the statute. Rem. Rev. Stat. Wash., § 7676. See *State ex rel. Trenholm* v. *Yelle*, 174 Wash. 547, 550. No provision is made for repayment or recovery of any employer's contribution once it is paid in, regardless of whether the full amount is required to compensate his or others' employees for injuries sustained; and no such repayments are contemplated. Awards are payable solely from the appropriate fund thus accumulated and payment is in no wise dependent upon the employer's continued existence, operation or contribution to the fund. Nor, under the plan, can payment affect the rate of premium for the year in which the award is allowed.

In view of these provisions and effects, the state Supreme Court has declared that neither the employer nor the employee has a vested right or interest in the fund; the moneys when collected are public moneys, held and administered by the state, albeit pursuant to the statutory purpose they constitute a "trust fund" for the benefit of injured workmen and their dependents.[9] The fund is therefore in no sense the private property of the employer. Consequently the payment of awards out of the fund in itself could not amount to a deprivation of the employer's property. Indeed, ap-

[9] See the opinion of the court upon the first appeal in this cause, 21 Wash. 2d 420, 427-429; Mattson v. Department of Labor, 176 Wash. 345, 347-348, affirmed, 293 U. S. 151; holding that the 1927 amendment putting a limit of three years to the employee's right to claim compensation as of right impaired no vested right of the employee, whether of property or equal protection under the Fourteenth Amendment, or of contract under Article I, § 10, of the Federal Constitution, and authorities cited.

pellant does not urge that the application of moneys previously paid in to the payment of an award of itself works the claimed unconstitutional result. Rather this is said to arise from the effect the award and its payment may have, by virtue of the statute's provisions relating to cost experience in the fixing of rates, upon appellant's liability for the payment of premiums in the future. It is anticipated, not presently realized or immediate, financial injury of which complaint is made.

As has been noted, in computing the rate of premium the Director is required to take into account not only the cost experience of each class over a previous two-year period, but also the average cost experience of each employer over the immediately preceding five-year period, in addition to "the then condition of each class and/or sub-class account." The quoted reference relates to the requirements for the keeping of class accounts, in the administration of the fund, for crediting of the payments made by each employer to the appropriate accounts, and for the charging of awards made to or on account of injuries to his employees against his experience. Rem. Rev. Stat. Wash., § 7676. It is this charge of which appellant complains, in the view apparently that it necessarily will entail the payment of a higher premium in years following the one in which the award is made, when the rate computed as the statute requires will reflect inclusion of the award in its cost experience. Accordingly, since it determines that the charge will be made, the allowance of an award is said to be a matter vitally affecting the employer's substantive liability and constitutes a final adjudication of that liability to the extent that the charge may affect the future rate.

Moreover, the statute provides in its procedural phases for the employer to have notice and the right to participate fully in the determination.[10] It must be taken that this right is conferred

[10] Report of accident and claim for compensation must be filed with the appellee Department of Labor and Industries. If either the claimant or the employer is aggrieved by any order, decision or award, he may petition for rehearing before the Joint Board of the Department. If rehearing is granted, the board may receive testimony. Appeal lies from the board's order to the Superior Court, where the matter is triable *de novo*, but upon the record made before the board, and from the Superior Court's judgment to the Supreme Court. Rem. Rev. Stat. Wash., § 7686; (1943 Perm. Supp.) § 7697.

No complaint is made that appellant did not have full benefit of the Act's procedural protections.

Although the Act does not provide specifically for the employer to contest the validity of an award at the time the Department is fixing the rate for

for the employer's protection in the fixing of rates as they may be affected by the allowance of awards through the inclusion of his cost experience as a factor in rate computation. Especially in view of these procedural protections, appellant urges that its substantive liability, once it is terminated through barring of a claimant's right to proceed by lapse of time, becomes an adjudicated matter, substantive, not merely procedural or remedial in character; and cannot therefore be revived consistently with the decision in the *Danzer* case.

Were this all, and were the state of the record plain that the allowance of the award necessarily would result in a later increase of the premium, we would be confronted with the necessity of determining whether such an increase would constitute the kind of injury or detriment forbidden by the due process clause. A mere increase in premium, under a compulsory and publicly administered accident insurance plan, designed to operate at cost based upon general and individual experience rather than at an arbitrary figure,[11] and surrounded with adequate procedural safeguards against arbitrary action, would not seem to be so obviously harsh or arbitrary in its effect upon employers generally that it could be said without question to be beyond the scope of the state's regulatory power or in violation of the due process prohibition of the federal Constitution.

But we are not faced with the necessity for deciding that question. Although appellant's brief states that "the award will be paid in large measure" by itself, it is not asserted that this burden will result from any increase in appellant's rate or in fact that any increase necessarily will follow from allowance and payment of the award. On the contrary, the statement seems obviously

---

the ensuing year or when he is called upon to pay that premium, it does not appear affirmatively that he may not have remedy then under the general law of the state. Cf. Copperweld Steel Co. *v.* Industrial Commission, 324 U. S. 780.

[11] The original act, as adopted in 1911, provided for a uniform rate of premium to be collected from all employers. Laws of Wash., 1911, c. 74, § 4. The cost feature based upon experience was introduced in 1931. Laws of Wash., 1931, c. 104, § 1.

The original act with its feature of "uniform payment" was held constitutional by this Court in Mountain Timber Co. *v.* Washington, 243 U. S. 217, affirming State *v.* Mountain Timber Co., 75 Wash. 581. See also State *ex rel.* Davis-Smith Co. *v.* Clausen, 65 Wash. 156. The "cost experience" amendment was said to be valid in State *ex rel.* Crabb *v.* Olinger, 196 Wash. 308, overruled on another point in St. Paul & Tacoma Lumber Co. *v.* Department of Labor, 19 Wash. 2d 639, 649.

irrelevant, or erroneous in so far as it may be taken to imply that either of these consequences will follow, since in no event can the award be paid out of the funds collected from an increase produced wholly or in part by its allowance. It is not until after the award has been allowed that it can be charged to the employer's experience or affect his rate of contribution.

Moreover, if appellant is taken to argue that an increase will result for the year or years following the award's allowance, the record neither demonstrates this nor furnishes support for an inference that such a result necessarily or even probably will follow. As the Department points out, the payment when made may be one factor in determining appellant's future rate. But the record does not disclose what rate appellant has been paying. For all that appears, this may be the maximum permitted by the statute, in which event no injury, present or future, could result from allowance and payment of the award.[12] Moreover, if it were assumed that the rate was less than the maximum, whether or not an increase would result or, if so, whether it would be substantial, are questions wholly speculative.

A variety of considerations makes them so. Appellant's experience is but one factor in the computation. It affects only 60 per cent of the actual rate. A single award is reflected in this fraction only as it affects the five-year individual average. When so reflected the amount of resulting increase in that average and in the fraction may be infinitesimal or insubstantial. The ultimate effect upon the actual rate will be watered down nearly by half through inclusion of the 40 per cent factor for class experience. Since the condition of the fund also must be considered, this too may minimize further the effect or, so far as appears, make an increase entirely unnecessary. The record furnishes no evidence concerning the condition of the fund, the class experience over the required period or the appellant's individual experience over the specified five years. The amount of the award is small, $460.50.

In sum, all that the record discloses is that this amount will be charged against the appellant's experience and taken into account with other factors, as the statute requires, in the computation for some future period, with possibly some increase resulting

[12] Except possibly upon the contingency, equally speculative upon the record, that the maximum rate might be reduced in case the charge resulting from the award were not made.

in the rate. But, in the absence of all evidence showing the facts concerning the other factors, it is entirely problematical whether an increase will follow or, if so, whether it will be wholly mathematical and infinitesimal or substantial in its ultimate effect upon appellant. This being so, appellant's complaint comes down, on the record, to nothing more than the bare possibility of some injury in the future.

The Fourteenth Amendment, through the due process clause, does not assure protection from the states' regulatory powers against injuries so remote, contingent and speculative.[13] Some substantial and more immediate harm must be shown to present a justiciable question concerning the state's power. The injury, as it appears from this record, is neither so certain nor so substantial as to justify a finding, upon that showing, that appellant's substantial rights have been or will be invaded by allowance and payment of the award.

Moreover, under the Act's procedural provisions, appellant has at no time been free from this contingent liability, whether before or after the 1941 amendment. For, although the 1927 amendment precluded the employee from filing claim as of right after the three-year period, it followed the original act in placing no limit upon the time within which the Department, of its own motion, might reopen the claim and increase, reduce or terminate the compensation.[14] Appellant therefore was at all times substantively liable to have its premium rate increased by the allowance of an award for aggravation; and the initial award, in consequence, was in no sense *res judicata* against later imposition of this liability.[15] Appellant's contrary argument erroneously cor-

[13] Cf. Mallinkerodt Chemical Works *v.* Missouri ex rel. Jones, 238 U. S. 41, 54; Plymouth Coal Co. *v.* Pennsylvania, 232 U. S. 531, 544-545, and authorities cited. Cf. also Castillo *v.* McConnico, 168 U. S. 674, 680; Tyler *v.* Judges of the Court of Registration, 179 U. S. 405; Frothingham *v.* Mellon, 261 U. S. 447, 488.

[14] See the terms of subsection (h) in its original and amended forms as set forth in note 5; Smith v. Department of Labor, 8 Wash. 2d 587; cf. note 15.

[15] It was exactly to prevent such rigid finality that the statute preserved both the Department's unlimited power to reopen the case and the employee's power to have it reopened as a matter of right during the limited period. From the beginning the Act seems to have been drawn to avoid the crystallizing effects of the doctrine of *res judicata* in relation to awards, whether as against the employer or the employee. The idea apparently was that the initial award for an injury would afford compensation for harms then apparent and proved. But it was recognized, on the one hand, that all harmful consequences might not have become apparent at that time

relates its own liability to pay premiums, for purposes of applying the statute's bar, with the employee's right formally to institute the proceedings (and to have judicial review) for securing an award, and assumes that this liability was terminated.[16]

It is true that the restoration, by the 1941 amendment, of the employee's right of taking the initiative may have had practical effects toward increasing the rates of premium, although none are shown by this record with any certainty. But appellant is seeking to have a state statute voided on the ground that it works a substantial injury to its substantive rights by creating or recreating a liability which had been extinguished by previously applicable law. It thereby has undertaken to demonstrate not only the injury and its substantial character, but as part of that burden the extinction of the preexisting substantive liability. This it has not done and could not do, in view of the Department's power to reopen the claim. It has succeeded only in showing that one mode provided by the preexisting law for bringing the liability into play had been terminated. It was this and only this which the 1941 amendment revived. At the most, therefore, appellant's injury, if it were otherwise more substantial, would consist in the restoration of an alternative, if also possibly a more effective, method for putting in motion the machinery provided for making an award.

In our view appellant has not made the showing of substantial harm, actual or impending, to any legally protected interest which

---

and, on the other, that harms then shown to exist might later be terminated or minimized. Cf. Choctaw Portland Cement Co. v. Lamb, 79 Okla. 109, 110. The purpose of the provisions for reopening, whether at the instance of the employer, the employee, or the Department, cf. notes 5 and 14, obviously was to prevent the initial award from finally cutting off power to take account of these later frequent developments. It was to maintain a mobile system, capable of adapting the amount of compensation from time to time in accordance with the facts relating to the injurious consequences for disability as they actually develop, not to cut off rigidly the power either to increase or to decrease the compensation once an award had become "final" for purposes of appeal.

[16] Obviously the liability and the right were not coextensive in duration, since the one continued after the other had been cut off. They were lacking also in correlation of obligation, since the employer was bound to pay the fund, not the employee; and the latter recovered from the fund, not the employer. Right and liability are usually correlative in a legal relation. But in this instance the correlation, as appellant poses it, is lacking; for two legal relations are involved, from each of which it seeks to extract a correlative.

is necessary to call in question the statute's validity.[17] Accordingly, the appeal must be and hereby is

Dismissed.[18]

Mr Justice BLACK is of the opinion that the only practical effect of the challenged state statute was to give to an injured employee a right to judicial review of an administrative action; that a contention that such a statute violates the Federal Constitution is frivolous; and that the appeal should be dismissed for that reason.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

---

[17] Cf. Mattson v. Department of Labor, 293 U. S. 151.

[18] Appellees have urged that the 1941 amendment did no more than restore the right of judicial review, as to claims filed after the three-year period, which prior to 1927 had existed with reference to all claims for aggravation without limitation as to time; and therefore the amendment could be taken in no way to violate any provision of the Constitution. It is true that the 1941 amendment restored the employee's right of judicial review where previously none had existed. But it accomplished more. It invested the employee with the right to require the Department itself to proceed, where previously no such right existed. Whether or not this would give cause for complaint, if the right were coupled with a more substantial and less contingent injury than is shown to exist in this case and with a previous total extinction of the employer's liability, need not be determined.

SUPREME COURT OF THE UNITED STATES.

No. 53.—October Term, 1945.

Gange Lumber Company, Appellant, *vs.* Ralph Rowley and Department of Labor and Industries of the State of Washington.	Appeal from the Supreme Court of the State of Washington.

[November 13, 1945.]

Mr. Justice Douglas, with whom Mr. Justice Burton concurs.

We cannot agree that the injury to appellant is so remote and speculative as to preclude it from attacking on constitutional grounds the award in question. The award, whether small or great, enters into the employer's cost experience; and the future premium payable by the employer reflects in part any increase or decrease in his cost experience. If the employer is not paying the maximum rate, an increase in his cost experience will inevitably make him pay a rate which would be lower but for the increase in his cost experience. And if, perchance, he is already paying the maximum rate, an increase in his cost experience will inevitably hold him there longer or lessen any reduction to which he otherwise would be entitled. The precise effect on future rates cannot, of course, be presently ascertained. Nor could it be shown in any case, whether the award was $460 or $46,000. For the rates are fixed annually and at the time of any one award all of the elements entering into the future computation will not be known. So if this employer is barred here because he can show no injury, he and all other employers will be barred in every case.[1] Yet we know from the operation of the system that the cost experience of each employer determines 60 per cent of his future rate. Their

[1] We are not advised that the employer can contest the validity of a prior award at the time the Department of Labor and Industries is fixing the premium rate to be paid into the fund for the ensuing year. The pertinent statute (Rem. Rev. Stat. § 7676) does not prescribe such a remedy and the decision of the Washington Supreme Court in Mud Bay Logging Co. *v.* Department of Labor, 189 Wash. 285, 286, would seem to indicate that it is not contemplated.

respective costs also affect to a lesser degree the basic premium rate applicable to each employer's class, and 40 per cent of that basic rate is reflected in the actual premium rate paid by each employer in that class. We might as well say that no employer could ever challenge the constitutionality of an award under this system because bankruptcy, fire or some cataclysm might put him out of business before a new rate is fixed.

On the merits we think *Campbell* v. *Holt*, 115 U. S. 620, and *Chase Securities Corp.* v. *Donaldson*, 325 U. S. —, govern this case. At no time was the employee's claim for aggravation extinguished. At all times the Department could have reopened the claim and made an additional award. We therefore do not reach the question of the constitutionality of an act which makes it possible to enlarge an award where previously there had been a final adjudication of the claim. Cf. *Danzer & Co.* v. *Gulf & Ship Island, R. Co.*, 268 U. S. 633.

We would affirm the judgment.